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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/057,212	01/24/2002	Nico N. Raczek	01/016 NUT	1719
38263	7590 07/29/2004		EXAMINER	
PROPAT, L.L.C.			SAYALA, CHHAYA D	
425-C SOUTH SHARON AMITY ROAD CHARLOTTE, NC 28211-2841		,	ART UNIT	PAPER NUMBER
			1761	
			DATE MAILED: 07/29/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

		NA				
	Application No.	Applicant(s)				
	10/057,212	RACZEK, NICO N.				
Office Action Summary	Examiner	Art Unit				
	C. SAYALA	1761				
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence address				
A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply If NO period for reply is specified above, the maximum statutory period we Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	36(a). In no event, however, may a reply be time within the statutory minimum of thirty (30) days will apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).				
Status						
1) Responsive to communication(s) filed on						
2a) This action is <b>FINAL</b> . 2b) ⊠ This	action is non-final.					
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
closed in accordance with the practice under E	x parte Quayle, 1935 C.D. 11, 45	o3 O.G. 213.				
Disposition of Claims						
<ul> <li>4)  Claim(s) 1 and 4-8 is/are pending in the application 4a) Of the above claim(s) is/are withdraw</li> <li>5)  Claim(s) is/are allowed.</li> <li>6)  Claim(s) 1 and 4-8 is/are rejected.</li> <li>7)  Claim(s) is/are objected to.</li> <li>8)  Claim(s) are subject to restriction and/or</li> </ul>	vn from consideration.					
Application Papers						
9) The specification is objected to by the Examine	r.					
10) The drawing(s) filed on is/are: a) acce	epted or b) $\square$ objected to by the $\mathfrak l$	Examiner.				
Applicant may not request that any objection to the	•					
Replacement drawing sheet(s) including the correction						
11) The oath or declaration is objected to by the Ex	aminer, Note the attached Office	Action of form PTO-152.				
Priority under 35 U.S.C. § 119						
<ul> <li>12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents</li> <li>2. Certified copies of the priority documents</li> <li>3. Copies of the certified copies of the priority application from the International Bureau</li> <li>* See the attached detailed Office action for a list of the priority documents</li> </ul>	s have been received. s have been received in Application ity documents have been received i (PCT Rule 17.2(a)).	on No ed in this National Stage				
Attachment(s)	•					
1) Notice of References Cited (PTO-892)	4) Interview Summary	·				
<ul> <li>2) Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)</li> <li>Paper No(s)/Mail Date</li> </ul>	Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:	ate atent Application (PTO-152)				

Application/Control Number: 10/057,212

**Art Unit: 1761** 

## **DETAILED ACTION**

## Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Spanier et al. (US Patent 4904494).

Spanier et al. teaches making a dog snack which may include a preservative in the amount 0.01 to 4 weight percent. Sorbic acid is listed as one of seven specified suitable preservatives. See col. 8, paragraph 7. See MPEP 2112 (Requirements of Rejection based on inherency; Burden of proof). Something which is old does not become patentable upon the discovery of a new property. The claiming of a new use, new function or unknown property does not necessarily make the claim patentable. In re Best, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

C. SAYÁLA

Primary Examiner

Group 1700.